



Paper No. 5

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OFFICE OF PETITIONS

In re Application of
Gregory Gardner et al.
Application No. 09/742,848
Filed: December 20, 2000
For: Implementation of a Supply-Based
Management System in a Network
Environment

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:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:

This is in response to the petition under 37 CFR 1.47(a), filed June 25, 2001.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 1.47(a)," and should only address the deficiencies noted below. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), Rule 47 applicant failed to show or provide proof that the nonsigning inventors have refused to sign the declaration. Before an inventor can refuse to sign an oath or declaration, a complete copy of the application papers (specification, claims, drawings, and oath or declaration) must have been presented. While the evidence submitted shows that the Declaration and Power of Attorney, and Assignment was forwarded to the non-signing inventors, no evidence has been submitted to show that a complete copy of the application papers was in fact mailed and/or received by the nonsigning inventors. Did the inventors receive a complete copy of the application papers? See Manual of Patent Examining Procedure, Section 409.03(d). Petitioner should show that a complete copy of the application papers was presented to the nonsigning

inventors, but that they did not respond to the request that they sign the oath or declaration in order to show that the inventors have refused to join in the application. A complete copy of the application papers should be sent to the last known address of the non-signing inventors, return receipt requested, with a request that they sign the declaration for the patent application and setting a deadline with a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and must be supported by documented evidence, such as copies of returned mail receipt showing proof of service, cover letter of instructions, telegraphs, E-mail, etc. See MPEP 409.03(d).

Where there is an express or oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to consider submitting the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Latrice Bond.

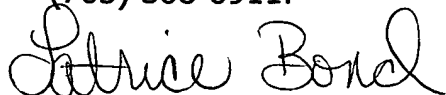
Further correspondence with respect to this matter should be addressed as follows:

By mail: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries related to this decision should be directed to Latrice Bond at (703) 308-6911.



Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy